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AGENDA:

ELDERLY

September, 1992

OFFICE OF THE ATTORNEY GENERAL
SCOTT HARSHBARGER, ATTORNEY GENERAL

GOVERNMENT DOCUMENTS
COLLECTION

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To: The Citizens of Massachusetts

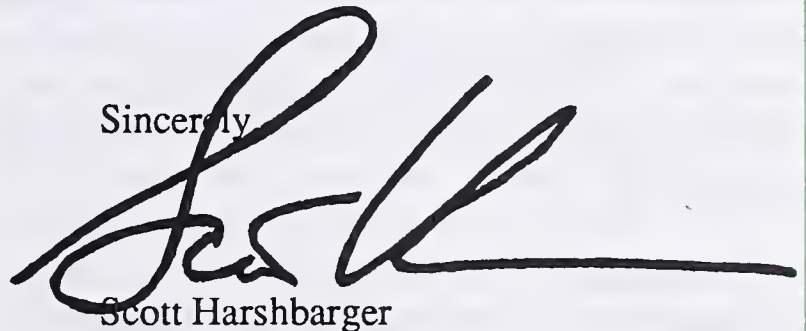
One of my major priorities as Attorney General is to do all I can to protect the elderly from crime and victimization in all its forms. Continuing and expanding this focus that I began as District Attorney, I also believe that we can do far more to prevent victimization by early intervention and include this newsletter as one part of our efforts to protect and prevent elder abuse in the Commonwealth.

In today's society, elders are at the risk of being specially targeted as victims of financial exploitation, consumer fraud, Medicaid fraud, health care insurance scams, abuse and neglect, and home improvement scams.

Only one out of every fourteen cases of abuse against the elderly is reported in the United States. Annually, only 110,000 cases of elder abuse are reported. Experts believe that an additional 1.4 million cases of abuse against elders go unreported each year. As the number of these incidents is increasing, the number of elderly persons is also increasing. Today there are more than 30 million Americans over the age of 65. By the year 2000, 35 million Americans will be over the age of 65. That number is expected to triple over the next fifty years. Statistics like these underscore the fact that issues confronting the elderly deserve top priority in the Attorney General's office as well as in other government agencies and private organizations.

Agenda: Elderly is a newsletter designed to report on efforts being undertaken by the Attorney General's office to prevent fraud, abuse and financial exploitation against the elderly. Each edition will include information on cases which have been prosecuted, new developments in investigations and potential scams, as well as legislative regulation and judicial decision updates and prevention tips. Your comments, input and suggestions are welcome.

Sincerely



Scott Harshbarger

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In January, 1991, Attorney General Scott Harshbarger began implementing several programs aimed at eliminating abuse and neglect of the elderly in the Commonwealth. His initial focus defined and targeted pertinent issues involving the safety and well-being of the elderly. These seven issues are outlined below. All cases, investigations, or special projects falling under the following categories have been designated "priority matters". This ensures they receive special attention in terms of expedited handling and victim support.

- I. Consumer Fraud
- II. Financial Exploitation
- III. Violent Crimes
- IV. Abuse and Neglect
- V. Medicaid Fraud
- VI. Health Care & Insurance
- VII. Housing

I. CONSUMER FRAUD

The elderly, more than any other group of individuals, are likely to be victims of crime by perpetrators who are motivated by economic gain. They are labeled easy prey for several reasons; in many cases they live alone, are perceived as having a lot of money, and often do not report crimes against them.

The Consumer Protection Division of the Public Protection Bureau has aggressively moved to combat consumer fraud. These crimes involve

investment exploitation, health care fraud, telemarketing schemes, and scams involving private health service suppliers targeting the elderly for rental or purchase of unnecessary medical equipment through high-pressure sales tactics.

To encourage increased reporting of consumer scams against the elderly, the Consumer Complaint Division has been specially trained to identify and give priority to these cases. As a result, many financial crimes have been prevented, particularly scams or "flim-flam" operations planned and perpetrated by strangers.

Consumer Complaint Division: 727-8400

II. FINANCIAL EXPLOITATION

Crimes against the elderly often involve the worst forms of financial exploitation and are among the hardest to control. They include several different types of fraud perpetrated by persons in positions of trust. Financial exploitation encompasses the following:

- abuse and misuse of powers of attorney, guardianships, and conservatorships
- forged or fraudulent trust or estate documents including wills
- transfers of real estate to unrelated persons in exchange for promised homemaker or home health aid services
- embezzlement or larceny of funds from an elder by a person in a fiduciary relationship to the elder

III. VIOLENT CRIMES

Violent crimes perpetrated against the elderly, whether physical, sexual, or emotional, are priority issues in the Attorney General's office. Regardless of the nature of the relationship between the perpetrator and the victim, these crimes must become priority issues not just for prosecutors and the criminal justice system but for nursing home administrators, senior center directors, the medical profession, and elder advocacy groups.

IV. ABUSE AND NEGLECT

Abuse and neglect of the elderly by friends and family have only recently come to the public's attention as serious and pervasive problems.

According to the Executive Office of Elder Affairs, in Massachusetts last year there were 3,568 reports of elder abuse of which 83% were screened in for investigation. Out of the cases that were investigated 1,922, or 65% were opened for the provision of protective services. In Massachusetts, there has been a documented increase in the number of elderly abuse cases over the past several years.

UNDER-REPORTING PHENOMENA

Statistics indicate a far greater incidence of elder abuse than the number of cases being reported. The under-reporting is due to several circumstances:

- reluctance on the part of some law enforcement agencies to address this problem on a large scale
- elders unable or unwilling to report being abused or neglected by family members

or caretakers out of fear they will be institutionalized

-lack of communication and cooperation between protective services and law enforcement

-failure by mandated reporters to report cases of elder abuse and neglect

Whatever the cause, this under-reporting phenomena must be decreased by public awareness programs. The Attorney General is committed to providing statewide programs to increase the public's knowledge regarding the abuse of the elderly.

DOMESTIC VIOLENCE/ELDER ABUSE CONFERENCE

The first annual Attorney General's Police Training conference, entitled "Domestic Violence and Elder Abuse: The 1990 Amendments", was held in October, 1991. Various police departments and District Attorney's offices throughout the Commonwealth of Massachusetts participated.

The goal of this first domestic violence conference was to provide information needed to respond to elder abuse cases in light of the new amendments to the Domestic Violence Abuse Prevention Act passed in December, 1990 and the amendments to the Elder Abuse Reporting Law passed in July, 1990.

Abuse Prevention Act

The Abuse Prevention Act contains nine sections. The pertinent law enforcement personnel sections are six and seven, which deal specifically with the obligations of the police. The sixth section defines the powers and duties of the police and the seventh section defines service and enforcement of restraining orders.

Elder Abuse Reporting Law

The new amendment to the Elder Abuse Reporting Law made financial exploitation of an elder a reportable condition to the Executive Office of Elder Affairs. This law protects elders who live in the community who are the victims of abuse, neglect or financial exploitation at the hands of a caregiver.

EOEA Hotline 1-800-882-2003

Reports of suspected abuse in a nursing home, rest home, or any other public institution are made to the Department of Public Health.

Day 727-5864

Night 1-800-462-5546

HARSHBARGER TO SPEAK ON VICTIMIZATION OF THE ELDERLY

Scott Harshbarger will be a speaker at "The National Conference on Victimization of the Elderly" being held on October 14-15 in Tampa, Florida.

The National Institute on Justice and the Office for Victims of Crime are co-sponsoring the conference highlighting recent research, evaluation, and programs that involve crime and abuse against the elderly.

V. MEDICAID FRAUD

One of the areas where the Attorney General's office plays a significant role is in ferreting out fraud and abuse in our health care system. As part of a national initiative, the Medicaid Fraud Control Unit of the Criminal Bureau investigates and prosecutes cases involving fraudulent claims

for reimbursement from Medicaid programs. Nationally, approximately 10-20% of health care appropriations are lost to fraud. In Massachusetts, that number amounts to \$2.7 million being drained from the state Medicaid budget through fraud and abuse.

VI. HEALTH CARE AND INSURANCE

Health care costs have more than doubled for older Americans in the last generation. It is part of the Attorney General's statutory responsibility to represent consumer interests in recommending and advocating fair and reasonable insurance rates. The Public Protection Bureau through its Regulated Industries Division, advocates before the Division of Insurance on behalf of elderly health care consumers, challenging the basis for the insurance companies' rate hike requests.

VII. HOUSING

Many seniors are the victims of home improvement scams. Cases involving exploitation of the elderly through adverse housing practices - where they live, for how long, and under what circumstances are also given priority in the Attorney General's office.

The AG's office has brought several cases against lenders, contractors, and salesmen in connection with the home improvement contractor scams. In addition, the office has negotiated settlements with several major banks that financed these unscrupulous lenders and contractors, to provide millions of dollars for refinancing and restitution to the victims.

Bureaus inside the AG's Office...

A FAMILY AND COMMUNITY CRIMES BUREAU

The Attorney General has developed for the first time, a Family & Community Crimes Bureau (FCCB) to focus on the diverse range of issues affecting the elderly.

The FCCB works with other state agencies that serve older Americans to share information on new legislation, current litigation and other legal developments impacting the elderly. These agencies include the Executive Offices of Elder Affairs and Human Services, the Department of Public Health and the Department of Public Welfare.

The FCCB reviews internal and external referrals of matters affecting the elderly and where appropriate convenes an interagency working group to discuss and work towards a resolution of the presenting problem. A great deal of emphasis is placed upon interagency cooperation in these matters so that the solution developed will have the broadest possible positive impact on elders.

CROSS BUREAU FOCUS

As part of its responsibilities the Bureau reviews monthly reports from the other Bureaus within the

Attorney General's office (Public Protection, Government and Criminal) and identifies those cases and/or investigations which involve issues affecting the elderly.

The goal of these cross-bureau efforts is to marshal resources and expedite responses to victimization of the elderly. Examples include:

- The coordination of institutional abuse and financial exploitation investigations and prosecutions between the Medicaid Fraud Control Unit of the Criminal Bureau and the Consumer Protection Division of the Public Protection Bureau.
- The collaborative efforts of the Consumer Protection Division and the Antitrust Division of the Public Protection Bureau with the Criminal Bureau to seek criminal as well as civil penalties against individuals who targeted the elderly in home improvement and second mortgage scams.

AN ELDER ISSUES GROUP

An Elder Issues Group comprised of professionals from state and federal agencies and private nonprofit organizations was formed by the FCCB. The Elder Issues Group deals with issues of concern to our elder population and includes representatives from the bureaus within the Attorney General's office whose work involves the elderly: FCCB, Consumer Protection Division, and the Medicaid Fraud Control Unit.

In 1991-92, the Elder Issues Group formed five subcommittees to target significant issues facing the elderly:

**ELDER CONFERENCE
NURSING HOME REGULATIONS
FINANCIAL EXPLOITATION
INSTITUTIONAL ABUSE
PUBLIC GUARDIANSHIP**

**ELDER
CONFERENCE**

The first annual elder conference was held in May, 1992. The conference was titled, "Prevention and Protection: Empowering Elders & People with Disabilities". It was co-sponsored by the Attorney General's office and the Executive Office of Elder Affairs.

This conference was developed to provide a forum in which a free exchange of ideas and strategies was fostered and where successful model programs were presented and discussed. In the face of rapidly changing demographics and increasingly more complex issues affecting older Americans and people with disabilities, the conference included workshops on the following:

- Financial exploitation
- Crime prevention
- Law enforcement/protective services protocols
- Health care decision making
- Housing options
- Americans with Disabilities Act
- Support for caregivers
- How the media can develop positive images of elders and people with disabilities

**NURSING HOME
REGULATIONS**

The Consumer Protection Division of the Attorney General's office has special responsibility for the investigation and prosecution of institutional abuse and neglect cases through the enforcement of the Attorney General's nursing home regulations. These regulations provide a right of action under the state's Consumer Protection Act for residents of long term care facilities who may be the victims of mistreatment or neglect.

The AG's office has been evaluating the current Nursing Home Regulations and has received comments and suggestions from a diverse group of providers, advocates, and state agency representatives. The AG's office is in the process of preparing a redraft of the regulations, and will begin the public hearing process later this fall.

**FINANCIAL
EXPLOITATION**

The AG's Consumer Protection Division works in conjunction with the Criminal Bureau and other state agencies, including the Secretary of State's Securities Enforcement Division and the Board of Bar Overseers to ensure a swift, effective response to reports of financial abuse of the elderly. As part of the Elder Issues Group, the Financial Exploitation subcommittee prepared a consumer information brochure on the abuse of guardianships, conservatorships and powers of attorney. Distribution of this brochure is expected later this Fall.

INSTITUTIONAL ABUSE

The Attorney General's office is in the process of reviewing the roles and responsibilities of state agencies in the investigation and resolution of institutional abuse cases through the Institutional Abuse subcommittee. After an initial investigation, the subcommittee has proposed the following recommendations:

- Continued cooperation and communication with the representatives of the various groups and agencies where reports and response to these reports are not being conducted in a timely fashion
- Continued cooperation with the various state agencies and, specifically, informal report to one another in an effort to minimize duplicative investigations and/or reporting
- Review of current statutes and reports to the Attorney General on the propriety of legislative initiatives to make the area of disabled and elder abuse reporting more effective and responsive to anticipated future complaints
- Joint training among various investigators of the investigating agencies, elements of which have already begun at various levels. Training initiatives will include private and public partnerships.

PUBLIC GUARDIANSHIP

This subcommittee was developed to review and analyze public guardianship legislation. Currently there is a bill pending before the state legislature which would seek to establish a pilot project for an

independent, autonomous Public Guardianship Commission under the general supervision of the Supreme Judicial Court, House...No. 3969, An Act Establishing A Public Guardianship Commission.

AG'S OFFICE AWARDED ELDER GRANT

In 1989, the Massachusetts Criminal Justice Training Council, the in-service training agency for all local police authorities, was awarded a Family Violence Law Enforcement Training and Technical Assistance grant. This grant was developed to implement a training program for law enforcement policy makers and officers on the most effective procedures and policies for responding to family violence victims. In 1991, The Massachusetts Committee on Criminal Justice received a follow-up grant from the National Institute of Justice. This grant was awarded to assess the implementation of the training and new police guidelines in 40 cities and towns across the Commonwealth of Massachusetts. As a continuation of this effort, in September, 1992, the Attorney General's office received a grant from the Massachusetts Committee on Criminal Justice to develop an elder abuse training curriculum and protocols for police officers.

LEGISLATION NEWS

Two bills were filed by the Attorney General's office last year addressing crimes against the elderly. The first, House...No. 2926 An Act Creating The Crime Of Criminal Neglect For Neglect Of An Elder Or Disabled Person Which Results In Serious Bodily Injury, defines neglect as wanton or reckless

intentional conduct that causes serious bodily injury, and establishes the crime of criminal neglect in Massachusetts.

The second bill filed by the AG's office is, House...No. 3512 An Act Creating The Crime Of Aggravated Assault When An Assault And Battery Results In Serious Bodily Injury Or Is Committed Upon An Elder, Disabled Person, Or A Child. It was filed to increase protection for disabled persons, children, and the elderly who are the victims of an assault and battery. It amends the current assault and battery statute by including the following:

- It would permit a felony prosecution for egregious violence that occurs within the family setting as well as for random acts of violence in the community.
- It would include making assault or assault and battery committed upon an elder or disabled person or child that results in serious bodily injury, a felony.

Both bills are currently pending before the legislature.

Harshbarger testifies on financial abuse of the elderly

June 1992...

Scott Harshbarger testified before the House Subcommittee on Telecommunications and Finance on proposed legislation which would give the Securities and Exchange Commission (SEC) enhanced authority to regulate and supervise

investment advisers and financial planners. The bill, entitled The Investment Adviser Regulatory Enhancement and Disclosure Act of 1992, is aimed at achieving significant supervisory and consumer protection advances in the area of investment adviser regulation.

The major features of the bill are:

- Financial advisers would be required to pay an annual fee based upon assets under management
- Initial and follow-up SEC inspections of investment advisers would be required
- A new mechanism would ensure that those required to register, in fact do so
- The definition of an investment adviser would be clarified
- Disclosures designed to inform consumers of pertinent information and alert them to potential conflicts of interest would be required
- Provisions would be made for a private right of action for fraud as a supplement to SEC enforcement efforts
- A suitability standard would be established, under which an adviser would have to reasonably determine that investment advice to be provided is suitable for the client

During the first five months of 1992, the AG's Economic Crimes Division initiated criminal prosecutions involving the theft of money from older Americans by financial advisers or attorneys who were in a position of trust, totalling more than \$5 million.

CASES concerning the elderly

\$275,000 earmarked for Massachusetts consumers

February 1992...

The Consumer Protection Division of the Attorney General's office obtained a consent judgment against the marketers and former local distributor of the "Contour Chair". The judgment prohibits the defendants from continuing alleged unfair or deceptive acts or practices in the future, and provides for the payment of \$230,000.

According to the complaint, Contour salespersons used a door-to-door sales operation designed to take particular advantage of the elderly.

The complaint further alleges that several senior citizens and a number of persons seeking relief from pain and discomfort, found their "Contour Chair" to be less than comforting after they'd spent from \$1,500 to \$5,000 for the chair. Salespersons demanded top dollar and dropped the price by offering so-called "discounts", only if and when the consumer initially refused to buy the chair. As a result, many susceptible and gullible consumers who didn't know that the prices quoted were illusory, paid thousands of dollars more than others did for approximately the same chair.

The settlement provides for a fund of \$215,000 to compensate consumers who had filed complaints with the Attorney General.

The defendants, who did not admit wrongdoing, will also pay \$15,000 to the Commonwealth to recover the costs and fees expended by the Attorney General.

AG'S actions save nursing home

February 1992...

Attorney General Harshbarger announced that as a result of a patient protection receivership action instituted by his Consumer Protection Division, 73 elderly and disabled residents of the Wayne Manor Nursing home in Dorchester will not be removed from the nursing facility where they have resided for several years.

The Attorney General sought and obtained the dismissal of the Wayne Manor bankruptcy proceeding in the federal court and obtained the appointment of a patient protector receiver in Suffolk Superior Court. Attorney Robert Griffin, a former chairman of the Rate Setting Commission and an expert in the administration of health care facilities, was appointed receiver of Wayne Manor.

Wayne Manor had been owned and operated by Barbara Cohen, of Milton, Massachusetts. In 1988, Cohen filed bankruptcy but continued to run the facility. In mid-1990 the bankruptcy trustee found that Cohen had let matters deteriorate to the point where the mortgages were in default, vendors were threatening to stop providing food and, after months of nonpayment, utilities were soon to be terminated. The trustee was therefore forced to ask the bankruptcy court to immediately relocate the patients and close the facility.

The receivership was successfully terminated by the transfer of ownership and operation of Wayne Manor to Family Rehabilitative Services, Inc., a subsidiary of Vinfen, a highly reputed, Boston based, non-profit health care provider.

For months the Attorney General's office worked closely with the Department of Public Health, the Department of Public Welfare and the Rate Setting Commission, as well as with the receiver to work out a plan that would resolve the facility's complicated financial affairs and protect the elder and disabled residents.

Suit Filed against Home Improvement Salesmen

May 1992...

Attorney General Harshbarger announced two suits filed against four home improvement salesmen for alleged unfair and deceptive practices in arranging home improvements.

The president of Carefree Building Products, Inc., allegedly arranged home improvements for the now defunct Vinyl Distributors of New England, and for other home improvement companies. Carefree Building Products, Inc., is also named as a defendant.

Among the consumers whose cases are detailed in the complaint is that of a 77 year old woman from Dorchester, who in 1988 was allegedly charged 2 1/2 times the amount she was quoted for replacement windows. Her house was encumbered with a \$65,000 mortgage that resulted in a total debt of \$178,000 after financing charges, and which requires her to make \$990 monthly payments until the year 2003.

The defendant agreed to a consent judgment that was filed contemporaneously with the cases. He is enjoined from future violations of the consumer protection laws and must pay restitution and penalties totaling \$25,000 for transactions relating to two consumers.

Registered Pharmacists indicted for filing false medicaid claims

May 1992...

Two Springfield area registered pharmacists and a West Springfield Pharmacy were indicted for filing false Medicaid claims and larceny. Combined, they were charged with a total of 113 counts of filing false Medicaid claims and one count of larceny.

The indictments allege that the pharmacists intentionally misrepresented the amount of medical supplies being dispensed by the pharmacy to area medicaid recipients in return for larger payments from the Department of Public Welfare from February, 1989, to February, 1991.

In many instances, the recipients who allegedly received the supplies for which the Commonwealth was billed were diabetics, elderly, blind, wheelchair-bound or otherwise suffering from a physical disability.

If convicted, the defendants face a maximum penalty of five years in state prison or a maximum fine of \$25,000 for each count.

Acton Attorney pleads guilty to charges involving nearly \$500,000

July 1992...

An Acton attorney was indicted and pled guilty to 14 indictments consisting of 37 counts of larceny, forgery, embezzlement by a Trustee and unauthorized practice of law.

He pled guilty to 10 indictments, involving 15 counts of larceny and embezzlement by a trustee, related to charges that he stole over \$205,000 from 15 different clients, including several elderly individuals. One indictment charged him with unauthorized practice of law after he had been suspended from practicing law on November 2, 1990. He resigned as an attorney in lieu of being disbarred on February 25, 1991.

Fuller trustees will resign and repay the trust \$250,000

August 1992...

The Public Charities Division of the Attorney General's office has reached a settlement with two attorneys regarding a dispute which arose concerning the Fuller Trust, a charity located in Milton, that provides housing for the elderly.

The attorneys resigned as trustees of the Fuller Trust in mid August and agreed to refund to the Fuller Trust \$250,000 of the legal fees related to the development of the continuing care retirement facility at the site of the Fuller Homes.

As part of the agreement with the Attorney General, they also resigned from the positions held with the two corporations formed to carry out the purposes of the Fuller Trust. They held positions as officers and directors of Fuller Trust, Inc., the corporation created in 1933 to carry out the trust's charitable purposes.

Milton town officials and others had expressed concern to the AG's office regarding the trustees' handling of the trust. Concerns focused on the fact that the continuing care facility had not yet been

built, despite the expenditure of most of the trust's funds in pre-development costs, including sizable legal fees, some of which were paid to the attorneys. The residents of the Fuller Home had also expressed concern about the future of the facility.

The court appointed a temporary receiver who operates and manages the affairs of the Fuller Trust, pending the appointment of successor trustees.

The Fuller Trust was created by Caroline Weld Fuller in 1930. Miss Fuller was ill and without family, and, as a result, created a trust for the benefit of women in similar circumstances.

tips for the elderly

ASK QUESTIONS of anyone who wants to sell you something. Find out if you can change your mind or send it back - and to where.

DON'T BUY anything over the telephone or through so-called "junk mail" solicitations. Simply do not respond. Hang up.

TELL POLICE, state and town officials, neighbors and friends if you are cheated. Don't be embarrassed; the sooner people know about a scam, the less likely there will be more victims.

DON'T ISOLATE yourself. Try to become more active in the community. If you can't get out because of ill health, call friends and ask if they can visit.

For further information please contact...

Jane Tewksbury	Chief of the FCCB	617-727-2200 X2049
Susan Motika	Deputy Chief FCCB	617-727-2200 X2004
Michael Kogut	Chief Medicaid Fraud Control Unit	617-727-2200 X3814
Robert Sherman	Chief Consumer Protection Division	617-727-2200 X2993
Erin O'Sullivan	Publications Coordinator	617-727-2200 X2674

AGENDA: ELDERLY NEWSLETTER

We hope you enjoyed the first issue of Attorney General Scott Harshbarger's ELDERLY NEWSLETTER. If you are aware of someone we have overlooked on our mailing list, please add their name at the bottom of this form. In the event that you have moved, please fill in the updated information and return the form to Erin O'Sullivan, Publications Coordinator, 20th Floor.

If you have any comments or suggestions, please feel free to include them on this form.

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Thank you for your cooperation and suggestions.

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